New Opinion Addressing Automatic Stay Relief in Single-Asset Real Estate Cases (In re 2655 Bush LLC, Bankr. N.D. Cal.)

Read the opinion here: http://chapter11cases.com/new-bankruptcy-opinion-in-re-2655-bush-llc-bankr-court-nd-california-2012-case-no-12-30388-tec-issue-automatic-stay-relief-in-single-asset-real-estate-case/

Summary

In a single-asset real estate case concerning a mixed-use building at 2655 Bush Street in San Francisco, the debtor purchased the property from Sum M. Seto Properties, LLC and Jenny P. Seto Properties, LLC in 2005 for $9.4 million, paying $3.0 million in cash and giving the seller (also the lender) a $6.4 million promissory note secured by a deed of trust on the property. The note required the debtor to make monthly interest-only payments for six years, and to pay the entire principal balance on October 5, 2011. The debtor demolished the existing structure with plans to build a new 81-unit apartment building. In 2009, Debtor obtained from the City and County of San Francisco entitlements to construct the new apartment building. The development of the property was delayed for 27 months by a lawsuit. After the legal challenge to the entitlements was resolved, the debtor did not have sufficient time to complete the development and/or refinance the note before the note came due on October 5, 2011. The debtor attempted to sell the property, but was unable to do so, and filed the present chapter 11 case on February 8, 2012, the day before a foreclosure sale scheduled by the lender.

Because this is a single-asset real estate case, the continuation of the automatic stay is conditioned upon Debtor making monthly interest payments to Lender. See 11 U.S.C. § 101(51B) and § 362(d)(3). The debtor's principal, Ernest McNabb, has consistently made the required payments from his personal assets. The debtor has actively attempted to market the Property during the pendency of the chapter 11 case, but has thus far not been able to close a sale. The debtor is currently in contract to sell the Property for $14.975 million and the buyer has until July 30,

2012 to complete the due diligence, and can back out of the contract through that date.

The lender's motion seeks relief from stay on two separate grounds. The lender first contends that Debtor has no equity in the property, and that the property is not essential to an effective reorganization because the debtor does not have sufficient resources to complete the development, and because the proposed development is inherently speculative. See 11 U.S.C. § 362(d)(2). The lender next contends that cause exists to grant relief from stay, because the debtor has unduly delayed selling the property. See 11 U.S.C. § 362(d)(1). Lender agrees that the debtor should be afforded a brief time to close the pending sale, but does not agree to any continuance of the stay beyond October 1, 2012.

The court determines that the debtor does have equity in the real property in question, and that the stay should remain in effect until April 5, 2013 to afford Debtor a reasonable opportunity to sell the property, on condition that the debtor make interest-only adequate protection payments to Lender in the interim.